

Nick Campins

From: Nick Campins
Sent: Saturday, June 13, 2009 12:07 PM
To: Bongiorno, Anthony
Cc: Gerson, Lisa; Joshua Stein; Pardo, James; Kalnins Temple, Jennifer; Riccardulli, Stephen; Handel, Lauren
Subject: RE: City of NY: Trial Subpoenas

Mr. Bongiorno:

The City disagrees wholeheartedly with your assessment of the state of the law. In addition, I have not "admitted" anything. For example, a party or a party's officer can be forced to travel more than 100 miles.

Nevertheless, in the interests of avoiding further incivility (your threat of sanctions is both uncalled for and legally specious), the City will direct its process server to withhold service to witnesses located more than 100 miles from the Court and who are not parties or officers of parties. The City will then raise this issue with the Court early next week for resolution.

The City trusts that you will not object that you have a lack of notice of such subpoenas pending resolution by the Court.

Sincerely,

Nick Campins

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(415) 348-8300 x202 (phone)
(415) 348-8333 (fax)

ncampins@sherleff.com

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From: Bongiorno, Anthony [mailto:abongiorno@mwe.com]
Sent: Saturday, June 13, 2009 11:08 AM
To: Nick Campins
Cc: Gerson, Lisa; Joshua Stein; Pardo, James; Kalnins Temple, Jennifer; Riccardulli, Stephen; Handel, Lauren
Subject: Re: City of NY: Trial Subpoenas

Mr. Campins: I have read Rule 43a, and you are comparing apples to oranges. Your subpoenas seek to compel attendance live in NY by those outside the subpoena power of the court. The rule talks about "contemporaneous transmission from a different location." In all events, there are certainly no "compelling circumstances" here nor is there "good cause." Everyone's deposition has been taken, or you have had the opportunity to do so. Also, just to clarify, you keep mentioning our potential motion to quash. Please be advised it is likely to be a motion for sanctions. You have just

admitted that you cannot subpoena someone to come to NY from outside the subpoena power of the court. Yet the subpoenas you sent to us purport to do just that. If you attempt to serve them, we will move for sanctions. If you want the court to "permit testimony in open court by contemporaneous transmission from a different location," you would have to file a motion first and show good cause and compelling circumstance. Then, at the very least, we will oppose, as there will be no subpoenas to quash. We will show that there is no good cause and/or that there are no compelling circumstances. I hope this clarifies our position. Feel free to proceed as you wish.

From: Nick Campins

To: Bongiorno, Anthony

Cc: Gerson, Lisa; Joshua Stein

Sent: Sat Jun 13 12:34:09 2009

Subject: RE: City of NY: Letter from A. Bongiorno re Notice of Trial Subpoenas

If memory serves, the Court noted on the record at an MDL status conference or on a teleconference that live testimony by contemporaneous transmission may be appropriate in this case.

I would also direct you to FRCP 43(a) which expressly provides for such testimony. As I said, when the time comes to oppose your motions to quash, we will brief it and let the Court decide.

Nick Campins

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From: Bongiorno, Anthony [mailto:abongiorno@mwe.com]

Sent: Friday, June 12, 2009 5:45 PM

To: Nick Campins

Cc: Gerson, Lisa; Joshua Stein

Subject: Re: City of NY: Letter from A. Bongiorno re Notice of Trial Subpoenas

Nick: we can and will disagree. To what are you referring when you say the "as the court has noted on the record, the court has authority to subpoena witnesses to appear remotely." What court, what record and when?

From: Nick Campins

To: Bongiorno, Anthony

Cc: Gerson, Lisa; Joshua Stein

Sent: Fri Jun 12 16:47:15 2009

Subject: RE: City of NY: Letter from A. Bongiorno re Notice of Trial Subpoenas

Of course the City does not intend to impose an undue burden on any witness. You are incorrect with regard to the extent of the Court's subpoena power. As the Court has noted on the record, the Court has the authority to subpoena witnesses to appear remotely nationwide.

The City will save any further response for its opposition to your motion to quash once service is established.

Nick Campins

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From: Joshua Stein
Sent: Friday, June 12, 2009 2:20 PM
To: Anthony A. Bongiorno (abongiorno@mwe.com)
Cc: Nick Campins; Lisa Gerson (lgerson@mwe.com)
Subject: RE: City of NY: Letter from A. Bongiorno re Notice of Trial Subpoenas

Tony –

I received your letter, thank you for your correspondence. As you noted in your letter, Nick Campins is coordinating the service of process for the City of New York. I have forwarded your letter to him for response as necessary.

Have a great weekend,

Josh

Joshua Stein
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NY-MTBE 1041

From: Gerson, Lisa [<mailto:LGerson@mwe.com>]
Sent: Friday, June 12, 2009 2:16 PM
To: Joshua Stein

Cc: MDL1358; mdl1358@weitzlux.com

Subject: City of NY: Letter from A. Bongiorno re Notice of Trial Subpoenas

Mr. Stein,

Please see the attached letter from Tony Bongiorno.

Regards,

Lisa A. Gerson
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EXHIBIT B